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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,006	02/19/2004	Eick Niemeyer	414-35587-USCP	4322

44871 7590 02/28/2007  
MADAN, MOSSMAN & SRIRAM, P.C.  
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HOUSTON, TX 77057

EXAMINER
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FITZGERALD, JOHN P

ART UNIT	PAPER NUMBER
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2856

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/28/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/782,006

Applicant(s)

NIEMEYER ET AL.

Examiner

John Fitzgerald

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-13, 15-28, 30-43 and 45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,11-13,15-23,26-28,30-38 and 41-45 is/are rejected.
- 7) ☐ Claim(s) 2,9,10,24,25,39 and 40 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The finality of the rejection of the last Office action is waived in view of the new rejections made below on the Applicant's submitted amended claims on 26 December 2006. Applicant's After Final Amendment has been entered into the record.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-8, 11-13, 15-23, 26-28, 30-38, 41-45 are rejected under 35 U.S.C. § 103(a) as being unpatentable over US 6,964,301 to Hill et al. and US 6,568,487 to Meister et al. Hill et al. disclose a method and apparatus for determining in situ a desired formation parameter of interest (see Fig. 5 below) including all of the recited elements of the claims of a any conveyable tool into a well borehole (as recited in claims 17 and 32) (Hill et al.: col. 6, lines 7-20); a test unit (27) in the tool with a probe/port in fluid communication with the formation via packers or seals (as recited in claims 3, 4, 18, 19, 33 and 34) including a test volume (38, 40), a control/sensing device (53) for monitoring/determining at least one characteristic of the test volume (i.e. formation fluid parameters, e.g. contamination/composition, pressure, temperature (as recited in claims 11, 26 and 41) (Hill et al.: col. 11, lines 6-13); wherein the draw rate of the fluid into the test volume is controlled by the control device, capable of adjusting/altering the draw rate based

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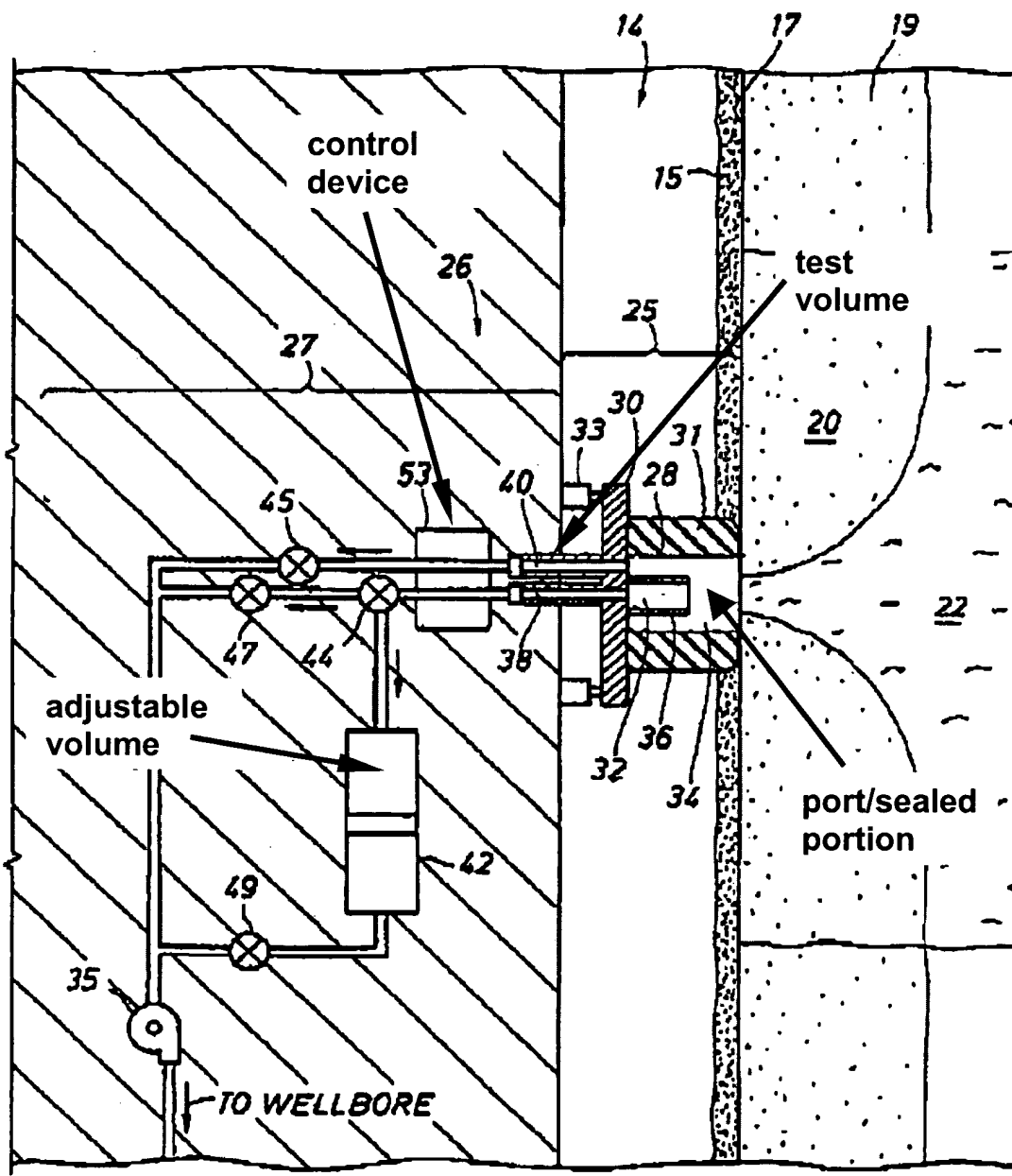
on a measured/determined formation fluid characteristic (note, that includes increasing or decreasing during one or more of a first or second draw portion, as recited in claims 1, 8, 16, 23, and 38)(Hill et al.: col. 9, lines 1-53); the control device includes a variable rate pump (35) (as recited in claims 20 and 35); and a processor and controller following programmed instructions for control of the apparatus (as recited in claim 31) (note: a processor and programmed instructions are inherent features of any measurement device to measure/process and subsequently perform controlled operations based on the measured data/values/output, as disclosed by Hill et al.). However, Hill et al. do not specifically disclose that when the draw rate is increased it includes at least one of increasing the draw rate “continuously” or in a “step-wise” manner during the first draw portion as well as employing “formation rate analysis” or FRA employing piston draw rate to determine desired formation parameters. As far as the apparatus is concerned, the apparatus disclosed by Hill et al. appears to be capable of performing all of the function limitations recited since it contains/discloses all of the elements necessary to perform the function limitations recited in the instant independent apparatus claims. However, Meister et al. disclose that (see Fig. 9 below and col. 9, lines 49-57) wherein a system volume/draw rate is adjusted in steps (via a piston), and a plurality of measurements are taken at each step during the draw portions (as recited in claims 1, 6, 7, 15, 16, 21, 22, 30, 31, 36, 37, 38 and 45) as well as employing formation rate analysis (FRA) employing data on the piston rate, and determining formation parameters such as fluid compressibility, mobility and formation pressure (Meister et al. col. 10, lines 52-58) (as recited in claims 11-13, 26-28 and 41-43). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ both “step-wise” during draw portions as well as FRA, as taught by Meister et al., modifying the method

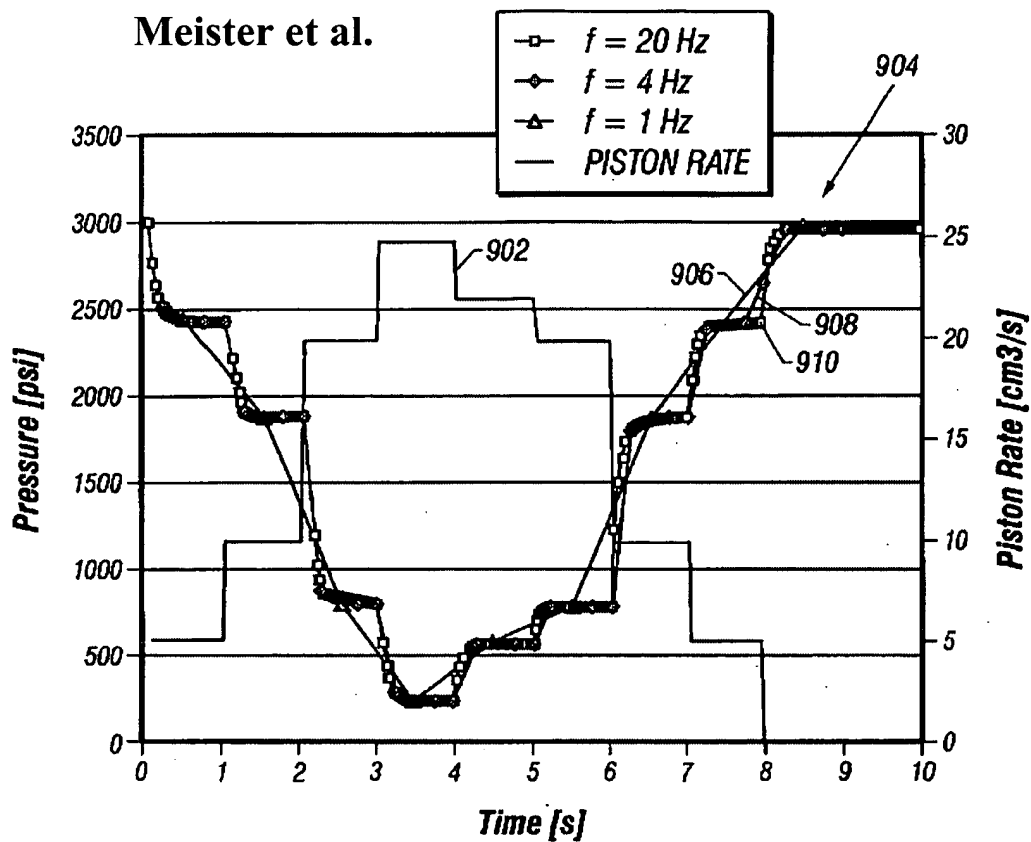
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disclosed by Hill et al., thus providing a faster evaluation of formations by using variable rates of piston drawdown and pressure build up (Meister et al. col. 11, lines 26-30).

**FIG. 5**

Hill et al.



**FIG. 9***Allowable Subject Matter*

4. Claims 2, 9, 10, 24, 25, 39, 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Fitzgerald whose telephone number is (571) 272-2843. The examiner can normally be reached on Monday-Friday from 7:00 AM to 3:30 PM. If attempts to

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reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams, can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JF  
02/20/2007  
HEZRON WILLIAMS  
SUPERVISORY PATENT EXAMINER  
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